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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.334 OF 2007

Nilkanth Baburao Soman .. Petitioner

versus

State of Maharashtra & Anr. .. Respondents

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Mr.J.A. Udaipuri for the petitioner.

Ms.Rajeshree M. Gadhavi APP for the State.

Mr.A.N. Kulkarni for respondent no.2.

CORAM : D.G.KARNIK, J

DATED : 11th December 2007

P.C.:

1. Heard learned counsel for the petitioner, learned counsel for respondent no.2 and learned APP for respondent no.1 State.

2. This revision petition is directed against judgement and order dated 18th April 2007 passed by the learned Metropolitan Magistrate 51st Court,

Shindewadi, Dadar, acquitting the respondent no.2 of the alleged offences punishable under section 52, r/w section 43 of the Maharashtra Regional and Town Planning Act (for short "MRTP Act").

3. On a complaint made by the petitioner, the State instituted a prosecution against the respondent no.2. The case of the prosecution is that the respondent no.2 unauthorizedly constructed a shed without obtaining the necessary permission for construction under the MRTP Act and thereby committed the offence.

4. PW no.2 Mr.Nilkanth Soman, who is the trustee of Vithal Mandir and the petitioner in this court was examined as a witness before the Magistrate. In his deposition admitted that one Mr.Bairagi committed the trespass and encroached upon the portion of the open space in question and put kachcha shed upon it. The shed was made up of tarpolin and plastic sheets. After the death of Mr.Bairagi the respondent no.2 illegally started using and occupying the shed. In view of this, learned Magistrate held that the shed was not constructed by respondent no.2 but was constructed by Mr.Bairagi. The learned Magistrate further held that there was no evidence to show that the shed was

demolished and reconstructed by the respondent no.2.

5. In my view, the learned Magistrate has dealt with the evidence and on appreciation of the evidence has come to the conclusion that the prosecution had not proved that the shed was constructed by respondent no.2. This is a possible finding of fact and in the absence of any perversity therein cannot be interfered with in exercise of revisional jurisdiction. In the circumstances, revision petition is rejected.

(D.G. KARNIK, J)